

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

LILLIAN JOHNSON

PLAINTIFF

V.

CIVIL ACTION NO. 3:11-cv-599-CWR-FKB

TODD SPANGLER, ET AL.

DEFENDANTS

**REPORT AND RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE**

This cause comes on this date *sua sponte* for the Court's consideration of whether this case should be dismissed due to Plaintiff's failure to prosecute her claims. *See Natural Gas Pipeline Co. v. Energy Gathering, Inc.*, 2 F.3d 1397, 1407 (5th Cir. 1993). Also before the Court is Defendant's Motion to Dismiss Improper Party. Docket No. 11. Having considered the parties' filings in this matter, the undersigned recommends that the Complaint in this matter be dismissed in its entirety.

Plaintiff failed to timely respond to an Order to Show Cause entered on December 11, 2012, requiring that she show cause for her failure to serve process within 120 days as required by Fed. R. Civ. P. 4(m). Docket No.10. Plaintiff was ordered to show cause by December 27, 2012, for her failure to serve Defendant Astrue within 120 days of the filing of the Complaint. Instead, on January 3, 2013, Plaintiff filed a letter which addresses neither the Order to Show Cause nor the Motion the Motion to Dismiss filed by Defendant Astrue. Docket No. 13.

By failing to address the Order to Show Cause entered December 11, 2012, Plaintiff has failed to show good cause for her failure to timely prosecute this case. Fed. R. Civ. P. 4(m). For this reason, the undersigned recommends that Plaintiff's claim against Defendant Astrue be dismissed without prejudice for failure to prosecute. Plaintiff having filed no substantive

response to Defendant's Motion to Dismiss Improper Party, the undersigned recommends that said Motion [Docket No. 11] be granted and Plaintiff's Complaint against Defendant Spangler be dismissed with prejudice.

The parties are hereby notified that failure to file written objections to the proposed findings, conclusions, and recommendation contained within this report and recommendation within fourteen (14) days after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. 28 U.S.C. §636, *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1428-29 (5th Cir. 1996).

RESPECTFULLY SUBMITTED, this the 14th day of January, 2013.

s/ F. Keith Ball
UNITED STATES MAGISTRATE JUDGE